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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KERRY BOULTON,

11 Plaintiff,

12 vs.

13 AMERICAN TRANSFER  
14 SERVICES, INC., a Delaware  
15 corporation ; RUBEN SANCHEZ, an  
16 individual; ANA GUERRA DE  
SANCHEZ, an individual; and DOES  
1-50, inclusive

17 Defendants.

CASE NO. 15cv462-GPC(RBB)

**ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL BY T.  
STEVEN GREGOR AND GREGOR  
LAW OFFICES**

[Dkt. No. 19.]

18  
19 Before the Court is defense counsel's motion to withdraw as counsel for  
20 Defendants American Transfer Services, Inc., Ruben Sanchez and Ana Guerra de  
21 Sanchez. (Dkt. No. 19.) Plaintiff filed an opposition on August 21, 2015. (Dkt. No.  
22 22.) The Court finds the matter suitable for disposition without a hearing pursuant to  
23 Civil Local Rule 7.1(d)(1). Based on the reasoning below, the Court GRANTS defense  
24 counsel's motion to withdraw as counsel.

25 **Background**

26 On March 2, 2015, Plaintiff Kerry Boulton ("Plaintiff") filed a complaint against  
27 Defendants American Transfer Services, Inc. ("ATSI"), Ruben Sanchez ("Mr.  
28 Sanchez"), and his wife, Ana Guerra De Sanchez ("Mrs. Sanchez") alleging four state  
law causes of action for fraud, conversion, violation of California Penal Code section

1 496, and money had and received. (Dkt. No. 1.) On May 5, 2015, the Court granted  
2 Defendants' motion to dismiss with leave to amend. (Dkt. No. 8.) On May 18, 2015,  
3 Plaintiff filed a First Amended Complaint against Defendants ATSI, Mr. Sanchez, and  
4 Mrs. Sanchez, alleging eight state law causes of action for intentional and negligent  
5 misrepresentation, violation of California Business and Professions Code section  
6 17200, negligence, conversion, unjust enrichment, breach of fiduciary duty, and  
7 conspiracy. (Dkt. No. 11.) On July 21, 2015, the Court granted Defendants' motion  
8 to dismiss all claims against Mrs. Sanchez and denied Defendants' motion to dismiss  
9 Plaintiff's claims for violation of California Business and Professions Code section  
10 17200 and breach of fiduciary duty against Mr. Sanchez and ATSI. Defendants filed  
11 an answer on August 5, 2015. (Dkt. No. 17.) On August 5, 2015, Defendants filed an  
12 answer. (Dkt. No. 18.) On the same day, defense counsel filed its motion to withdraw  
13 as counsel for Defendants. (Dkt. Nos. 19.)

#### 14 Discussion

15 T. Steven Gregor and Gregor Law Offices ("Gregor Law Offices"), counsel of  
16 record for Defendants ATSI, Mr. Sanchez, and Mrs. Sanchez, move to withdraw as  
17 counsel because Defendants have made it unreasonably difficult for Gregor Law  
18 Offices to carry out its employment and effectively represent Defendants; no party will  
19 be prejudiced by the withdrawal; it will not cause harm to the administration of justice;  
20 and withdrawal will not delay resolution of the case. (Dkt. No. 19.) Plaintiff filed an  
21 opposition arguing she will be prejudiced if counsel is allowed to withdraw since the  
22 likelihood of reaching a resolution will be drastically reduced. Moreover, the case will  
23 have to be stayed while Defendant ATSI obtains counsel and because Mr. Sanchez is  
24 not cooperating with his attorney, he is "essentially judgement proof" and will unlikely  
25 obtain new counsel.

26 "An attorney may not withdraw as counsel except by leave of court." Darby v.  
27 City of Torrance, 810 F. Supp. 275, 276 (C.D. Cal. 1992). The trial court has  
28 discretion whether to grant or deny an attorney's motion to withdraw in a civil case.

1 See La Grand v. Stewart, 133 F.3d 1253, 1269 (9th Cir. 1998); Stewart v. Boeing Co.,  
 2 No. CV 12-5621 RSWL(AGRx), 2013 WL 3168269, at \*1 (C.D. Cal. June 19, 2013).  
 3 Courts should consider the following factors when ruling upon a motion to withdraw  
 4 as counsel: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may  
 5 cause to other litigants; (3) the harm withdrawal might cause to the administration of  
 6 justice; and (4) the degree to which withdrawal will delay the resolution of the case.  
 7 Curtis v. Illumination Arts, Inc., No. C12-0991JLR, 2014 WL 556010, at \*4 (W.D.  
 8 Wash. Feb. 12, 2014); Deal v. Countrywide Home Loans, No. C09-01643 SBA, 2010  
 9 WL 3702459, at \*2 (N.D. Cal. Sept. 15, 2010). Rule 3-700 of the California Rules of  
 10 Professional Conduct of the State Bar of California provides that an attorney may  
 11 request a withdrawal if it is unreasonably difficult for counsel to carry out his  
 12 employment effectively. Cal. R. Prof. Conduct 3-700(C)(d). Failure to pay attorney's  
 13 fees can be grounds for withdrawal. Indymac Federal Bank, FSB v. McComic, No.  
 14 08cv1871-IEG(WVG), 2010 WL 2000013, at \*1 (S.D. Cal. May 18, 2010); Cal. R.  
 15 Prof. Conduct 3-700(C)(1)(f). Local Civil Rule 83.3(f)(3) also provides:

16        Withdrawals. (a) A notice of motion to withdraw as attorney of record  
 17        must be served on the adverse party and on the moving attorney's  
 18        client. (b) A declaration pertaining to such service must be filed.  
 Failure to make service as required by this section or to file the  
 required declaration of service will result in a denial of the motion.

19 Local Civil R. 83.3(f)(3). Here, defense counsel has filed a declaration of service  
 20 which indicates that the motion was served on his client and to opposing counsel.  
 21 (Dkt. Nos. 19-2, 19-3.)

22        Defense counsel states that Defendants executed a standard fee agreement  
 23 ("Agreement") which required Defendants to keep their attorney informed of  
 24 developments, abide by the Agreement, pay attorney's bills on time, and keep attorney  
 25 advised of client's address and telephone number. (Dkt. No. 19-2, Gregor Decl. ¶ 4.)  
 26 The Agreement also provides that the attorney may withdraw at any time with the  
 27 client's consent or for good cause. (Id. ¶ 5.) Defense counsel's last communication  
 28 with Mr. Sanchez was April 27, 2015 via email, which was their normal means of

1 communicating. (Id. ¶ 6.) Since then, he sent emails to Mr. Sanchez on May 19, 27,  
2 and 29, June 5, 8, and 19, and July 9, and 21, 2015 requesting that he be contacted.  
3 (Id.) Defense counsel attempted to call Mr. Sanchez on July 21, 2015 and discovered  
4 that his phone number was no longer a working number. (Id.) On July 22, 2015,  
5 defense counsel sent Mr. and Mrs. Sanchez a letter, and an email on August 3, 2015  
6 informing them that he would be withdrawing as counsel. (Id.) Attorney Gregor has  
7 not received any response from Mr. or Mrs. Sanchez to his emails or to his letter. (Id.)  
8 In addition, Mr. and Mrs. Sanchez have not paid their bills on time and have, on at least  
9 one occasion, paid counsel by check that was returned for insufficient funds. (Id. ¶ 9.)  
10 Due to Defendants' lack of communication with the Gregor Law Offices and not  
11 paying their bills on time, it has been unreasonably difficult for Gregor Law Offices to  
12 carry out its employment and effectively represent its clients in this matter. (Id.)

13 The Court concludes that defense counsel has demonstrated good cause to be  
14 relieved as counsel. The Court also concludes that the withdrawal will not prejudice  
15 the plaintiff, harm the administration of justice or delay resolution of the case. The  
16 case was filed on March 2, 2015, (Dkt. No. 1), and an answer was recently filed on  
17 August 4, 2015. (Dkt. No. 18.) In addition, no dates have been set in this case.


18 The Court acknowledges Plaintiff's concerns; however, even if defense counsel  
19 was not relieved as counsel, a resolution of this case would still be difficult and any  
20 prejudice she asserts would still remain as Defendants have not cooperated with  
21 defense counsel in defending this case.

22 Based on the above, the Court GRANTS defense counsel's motion to withdraw  
23 as counsel for Defendants. While Defendant Ruben Sanchez, an individual, may  
24 proceed pro se, Defendant ATSI, a corporation may not proceed without counsel. See  
25 United States v. High Country Broadcasting Co. Inc., 3 F.3d 1244, 1245 (9th Cir.  
26 1993); see also C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697-98 (9th Cir.  
27 1987); Civil Local Rule 83.3k ("all other parties, including corporations; partnerships  
28 and other legal entities may appear in court only through an attorney permitted to

1 practice pursuant to Civil Local Rule 83.3.”). Therefore, the Court grants ATSI 30  
2 days to obtain substitute counsel and have counsel file a notice of appearance. ATSI  
3 is notified that if it fails to obtain new counsel and have counsel file a notice of  
4 appearance, it may be subject to default proceedings. See High Country Broadcasting  
5 Co., Inc., 3 F.3d at 1245. Mr. Sanchez must notify the court of his currently mailing  
6 address within 30 days from the date of this order.

7 IT IS SO ORDERED.

8  
9 DATED: September 1, 2015

10   
11 HON. GONZALO P. CURIEL  
12 United States District Judge  
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15 cc: Ruben Sanchez, Ana Guerra De Sanchez,  
16 and American Transfer Services, Inc.  
17 2791 Silver Oak Court  
18 Chula Vista, CA 91914  
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